

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds this appeal should be dismissed.

This is the second appeal to the Board in this claim. The first appeal was the result of a May 4, 2009 preliminary hearing Order denying additional benefits. That Order was reversed and remanded for further order. Another preliminary hearing was held on November 17, 2009, and it is from the Order following that hearing the claimant appeals. The Judge's Order dated November 18, 2009, awarded temporary total disability benefits commencing July 20, 2009.

The claimant asks the Board to find that the temporary total disability benefits should commence on August 1, 2008, rather than July 20, 2009. Unfortunately claimant filed no brief in support of her position.

The respondent contends the Board has no jurisdiction at this juncture in the proceeding over the issue of when temporary total disability benefits should commence.

The implicit finding that claimant satisfies the definition of being temporarily and totally disabled as set forth in K.S.A. 44-510c and the date the benefits should commence are not issues denoted as jurisdictional issues in K.S.A. 44-534a and subject to Board review from a preliminary hearing order, which are, namely, (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses that challenge the compensability of the injury under the Workers Compensation Act.¹

In addition, the Board has the jurisdiction to review allegations that an administrative law judge exceeded his or her jurisdiction. K.S.A. 2008 Supp. 44-551(i)(2)(A) provides:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

The issue framed in this appeal is not one the Board has jurisdiction over at this juncture of the proceeding. The Judge did not act beyond his authority. The Judge had the authority to determine claimant's right to receive temporary total disability benefits as K.S.A. 44-534a(a)(2) provides: "Upon a preliminary finding that the injury to the employee is compensable . . . the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation" And the jurisdiction and authority to enter such order is not affected by whether the issue was decided correctly or incorrectly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

In conclusion, the Board does not have the jurisdiction or authority at this juncture to review the implicit finding that claimant satisfied the definition of being temporarily and totally disabled and to change or modify the date the benefits were ordered to commence.

WHEREFORE, the undersigned Board Member dismisses this appeal, leaving the November 18, 2009 preliminary hearing Order entered by Judge Howard in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January, 2010.

CAROL L. FOREMAN
BOARD MEMBER

c: John R. Stanley, Attorney for Claimant
Stephanie Warmund, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).